

#169

ONTARIO  
MINISTRY OF LABOUR

JUN 22 1982

HUMAN RIGHTS  
COMMISSION

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE,  
R.S.O. 1980, c. 340, as amended

and

IN THE MATTER OF a complaint dated November 4, 1981 made by Mr. Herbert Jones of Willowdale, Ontario, alleging discrimination in services and facilities by the Municipality of Metropolitan Toronto and Mr. Paul Cluff and Mr. Jim Malley, contrary to Section 2(1)(a) and (b) of the Ontario Human Rights Code;

and

IN THE MATTER OF a complaint dated November 4, 1981 made by Mr. I. Lindo of Mississauga, Ontario, alleging discrimination in services and facilities by the Municipality of Metropolitan Toronto and Mr. Paul Cluff and Mr. Jim Malley, contrary to Section 2(1)(a) and (b) of the Ontario Human Rights Code;

and

IN THE MATTER OF a complaint dated November 4, 1981 made by Mr. O. Paris of Mississauga, Ontario, alleging discrimination in services and facilities by the Municipality of Metropolitan Toronto and Mr. Paul Cluff and Mr. Jim Malley, contrary to Section 2(1)(a) and (b) of the Ontario Human Rights Code.

BOARD OF INQUIRY:

M. L. Friedland, Q.C.

APPEARANCES:

John Sopinka, Q.C., and  
Donald Houston: Counsel for the  
Commission and complainants

R. M. Parker: Counsel for the  
respondents

Hearings in the above matters were held in Toronto on May 13 and 14, 1982.



DECISION

## I

Messrs. H. Jones, I. Lindo, and O. Paris allege that they were discriminated against at a public golf course in Metropolitan Toronto. I was appointed, on December 21, 1981, by Robert Elgie, the Minister of Labour, as a Board of Inquiry under the Ontario Human Rights Code to hear and decide the complaints. The hearing was conducted on May 12 and 13, 1982.

The three complainants are black. They have worked at the Toronto International Airport for a number of years. Messrs. Jones and Paris are keen golfers and have played at many public courses in and around Metropolitan Toronto. Mr. Lindo was a beginner at the time of the incident that is the main subject of the complaint. On Wednesday, June 6, 1979, the three complainants went to the Humber Valley Golf Course, conceded by the respondents to be a "place to which the public is customarily admitted" and therefore subject to the Ontario Human Rights Code (see s. 2(1)).

They arrived around 9 o'clock in the morning. It was a warm pleasant day and there were quite a number of people waiting to play golf. They paid their green fees and gave their names to the "starter". When it was their turn to play, perhaps around 9:30, the starter called out their three names on the public address system along with a fourth name. The fourth person, who did not give evidence at the hearing, was white. The fourth man approached the complainants to join their group. They told him that they wished to play as a threesome and that he should go ahead by



himself. They apparently stated that one of their number was a beginner and for this reason they did not want a fourth person to play with them. The fourth man told the starter what had transpired. The starter, Jim Malley, who has been the assistant pro at Humber Valley for a number of years, approached the complainants and said they were being "anti-social". It should be noted at the outset that Commission counsel at the end of the hearing dropped allegations of discrimination against Mr. Malley.

Thus far in the story there are no major conflicts in the evidence. From this point on there is a wide divergence in the stories of the complainants on the one hand and the respondents, Jim Malley and the course's pro, Paul Cluff, on the other. Mr. Malley says that Mr. Jones used abusive language and appeared to threaten him with the club he had in his hand. Mr. Cluff gave evidence that he could see from the clubhouse where he was that Mr. Malley was being threatened. The complainants say that they did not use foul language and that Mr. Jones did not threaten Mr. Malley. Unfortunately no disinterested witness gave evidence with respect to this incident. I believe that the complainants conduct was very much more serious than the complainants now believe took place. Mr. Malley went directly to the clubhouse to tell Mr. Cluff, his boss, what had happened. Meanwhile the complainants teed off from the first tee. Mr. Cluff jumped into his truck and drove onto the fairway to take up the matter with the complainants, a unique procedure which he says he had never done before in his 20 years as a pro. He told them that they had no right to



abuse the starter. No doubt he and the complainants used rough language in making their points. There were allegations of threatening gestures on both sides. The complainants' point was that they had paid their money and were entitled to play as a threesome. Mr. Cluff said that the rule was that on busy days the starter, if possible, sent out persons in groups of four. I will return to this issue later.

Mr. Cluff left the fairway and called the police. The complainants continued playing golf. About 15 minutes later 2 police officers came to the golf course and drove out onto the fairway in their patrol car, behind Mr. Cluff's truck. Once more the dispute erupted, although it seems that this time the language was less extreme, perhaps because of the presence of the officers. A crowd started to form and Officer Turnbull, one of the two officers and the only one to give evidence, suggested that they all return to the clubhouse to discuss the matter. At the clubhouse the officer suggested that Mr. Cluff return their money, which he did, and they left. As they left Mr. Cluff is alleged to have said "See you later, boys", with some stress on the word "boys", and "It will be the last time that you blacks play at this golf course". Mr. Cluff denies saying the latter and says that he calls many players "boys". Officer Turnbull, the only independent witness, says that Mr. Cluff used both expressions, although he agrees that he may not have told this to the Metropolitan Toronto counsel, Mr. Parker when he told Mr. Parker his story a few months after the incident. The complainants then went to the police station to see if they could get any redress and later filed





complaints with the Ontario Human Rights Commission.

Both Messrs. Cluff and Malley testified that everyone knows that a starter sends off four players together on busy days. Single players are matched with threesomes and doubles are matched with doubles. In this way more persons can use the course. They state that if a group of 2 or 3 persons insist on playing by themselves they can do so, but they have to wait until all the groups of 4 have gone ahead of them. The complainants say that they did not know that this was a rule of the course. Sometimes, they say, players are asked if someone can join them, but it is their right to say no. I accept the evidence of Messrs. Malley and Cluff that this is the commonly understood practice at busy public courses. It certainly seems to me to be a sensible practice. It would be better, however, if it were printed on the score card, or posted at some appropriate place; nothing is now stated on the card about the matter. Mr. Cluff stated that he thought that there may be a notice posted at the first tee about this rule; but if there were such a rule posted I would have expected it to have been brought out more clearly by the respondents.

Commission counsel puts the complainants under both sections 2(1)(a) and 2(1)(b) of the Ontario Human Rights Code. Section 2(1) reads as follows:

2.-(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,

- (a) deny to any person or class of persons the accommodation, services or facilities available in any place to which the public is customarily admitted; or



- (b) discriminate against any person or class of persons with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted,

because of the race, creed, colour, sex, marital status, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons.

Mr. Sopinka says that the three complainants were denied services or facilities and were discriminated against with respect to services or facilities because of race or colour. He points out that if colour or race was one of the factors operating, even if there were others operating at the same time, this would be a violation of the Act. (See Regina v. Bushnell (1974), 4 O.R. (2d) 288 (Ont. C.A.); Bushnell and decisions of other boards are discussed in Reid v. Russelsteel Ltd. (May 19, 1981), a decision by Professor Peter Cumming.) Mr. Sopinka also argues that the Commission need only show a violation of the Act on "a balance of probabilities". Mr. Parker accepts these interpretations of the Act, as do I.

There is no question in my mind that the complainants were genuinely embarrassed and humiliated by being asked to leave the course. There is also no question in my mind that the complainants genuinely felt and feel now that they were discriminated against because of their race or colour. But I am not satisfied that this was a motivating factor in Mr. Cluff's actions. Messrs. Malley and Cluff were attempting to establish their authority to enforce what they considered the proper rules of the course. Perhaps Mr. Malley should not have raised the issue; but he did so, and did so in an inoffensive manner. Again, it should be noted that all complaints against Mr. Malley have been abandoned by the



Commission. It is not my function to state whether Mr. Cluff overreacted to the situation; perhaps he did. My responsibility is to determine whether race or colour was a factor in his reaction. I am not satisfied that it was. The Humber Valley Golf Course is widely used by persons of all racial backgrounds. Mr. Cluff says that he has often played golf and, in his words, "broken bread" with black golfers. Assuming that Mr. Cluff made the statements that were alleged to have been made when the complainants were leaving, this would not necessarily show that his prior actions were racially motivated.

The complainants alleged three other relatively minor incidents that occurred at the golf course over the previous two years. Commission counsel did not ask that I find that these complaints were proved, but rather that they indicate that the pros at the club were prejudiced. The incidents were minor ones and were not reported to anyone at the time. In one incident, for example, it was alleged that Mr. Paris was given a golf cart with a broken wheel. Shortly thereafter Mr. Paris says he saw a white man being given a good cart. When he questioned the pro about it he was also given a good cart. Mr. Cluff has no recollection about the incident and says that it could easily be explained by other carts coming into the pro shop in the meantime. These prior incidents, if they show anything, show that the complainants were very sensitive, perhaps overly sensitive, to the way they were treated.



Mr. Houston for the Commission presented some very persuasive arguments that the Municipality of Metropolitan Toronto should be liable under section 2 for the conduct of Mr. Cluff. He argued that Mr. Cluff was an employee of Metro and not an independent contractor; but even if he were an independent contractor Metro would be liable under section 2. It is not necessary for me to deal with the liability of Metropolitan Toronto in view of my finding with respect to Mr. Cluff.

There will therefore be an order dismissing the complaints against Paul Cluff, Jim Malley and The Municipality of Metropolitan Toronto.

DATED at the City of Toronto in the County of York this 17th day of June, 1982.

  
MARTIN L. FRIEDLAND, Q.C.

1. The first part of the document is a letter from the President of the United States to the Secretary of the Navy, dated 18th March 1899. The letter is addressed to the Secretary of the Navy, Department of the Navy, Washington, D.C. The letter is signed by the President of the United States, William McKinley.

1. The first of these is the "generalized" or "unspecific" type, which is characterized by a diffuse, non-specific, and often chronic inflammation of the mucous membrane of the nose and throat. This type is usually associated with a chronic infection of the upper respiratory tract, and is often accompanied by a chronic sinusitis. The inflammation is usually of the mucous membrane, and is often accompanied by a chronic sinusitis. The inflammation is usually of the mucous membrane, and is often accompanied by a chronic sinusitis.

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#### ORDER

This matter coming on for hearing on May 13th and 14th, 1982, before this Board of Inquiry, pursuant to my Appointment by Robert Elgie, Minister of Labour, dated December 21, 1981, in the presence of Counsel for the Ontario Human Rights Commission and Messrs. H. Jones, I. Lindo and O. Paris, the Complainants, and Counsel for the Municipality of Metropolitan Toronto and Messrs. Paul Cluff and Jim Malley, the Respondents, upon hearing the evidence adduced by the parties and what was alleged by the parties, and upon the finding of this Board that the complaints were not substantiated.

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It is ordered that the complaints be dismissed.

DATED THIS 17th DAY OF June , A.D. 1982

*M. L. Friedland*

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M. L. FRIEDLAND, Q.C.  
Chairman, Board of Inquiry

